

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION**

**IN RE: DIGITEK PRODUCTS LIABILITY LITIGATION MDL NO. 1968**

THIS DOCUMENT RELATES TO ALL CASES

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**AMENDED APPLICATION OF ATTORNEY G. ERICK ROSEMOND TO THE  
PLAINTIFFS' STEERING COMMITTEE IN MDL No. 1968**

**I. Introduction**

Attorney G. Erick Rosemond, of the law firm Hissey Kientz, L.L.P. ("Hissey Kientz"), with offices in Austin and Houston, Texas, and representing plaintiffs in this MDL, submits this amended application for admission to MDL 1968's Plaintiffs' Steering committee ("PSC").<sup>1</sup> This amended application will replace the previously submitted application by Mr. Rosemond in order to comply with this Court's page limit.

**II. Willingness and Availability to Commit to a Time-Consuming Project**

The undersigned and his firm are well-aware that complex litigations such as this one are highly demanding in time and other resources. It is with this awareness that we make this application. Our firm has at least three experienced attorneys, including the undersigned dedicated to this Digitek litigation. Based on years of pharmaceutical / medical device experience in multiple MDL's across the country, we are aware that these cases demand substantial time and energy for: drafting and responding to discovery; gargantuan document review; preparation for and taking depositions; and, the patience and willingness to work with counsel to resolve and narrow discovery issues. We are

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<sup>1</sup> The undersigned attorney's firm has filed the following cases:  
[2:08-1201 Denise Clark; 2:08-1198 Roger Hardesty; 2:08-1199 Phillip Geno; 2:08-1195 Elijah Lewis]  
Additionally, the undersigned expects to file in the coming weeks over one hundred lawsuits on behalf of persons injured by Defendants' drug.

further aware that PSC membership entails substantial travel commitments, including frequent trips to the MDL Court in Charleston, West Virginia. Hissey Kientz is willing and able to commit itself to this Court and the PSC to eagerly, faithfully, and fully prosecute all of these duties.

### **III. Ability to Work Cooperatively with Others**

The U.S. pharmaceutical/medical device litigation bar, both plaintiff and defense, is a small one. If one wants to last very long in this practice, she must be able to disagree without being disagreeable, to separate the professional from the personal, and above all else, for her colleagues to know she'll keep her word without signing an affidavit. Of course, these are all things that *should* be ingrained in the practice of law, but regrettably, often are not. The undersigned and his firm's members, however, have worked for years to make these traits centerpieces to their practice and reputations.

The undersigned and members of his firm have worked quite well in the past with several of the attorneys applying for PSC membership, and consider many of them friends. We have worked with this MDL's Liaison Counsel Fred Thompson, Esq. and his firm Motley Rice. We have worked closely with the law firm of Blizzard McCarthy & Nabers. We have worked with Camp Bailey, Esq. of Bailey Perrin & Bailey in the *Fen-Phen Litigation* – in fact, Camp Bailey and the undersigned were members of the same firm. We have worked with Janet Abaray, Esq. of the Burg Simpson firm. And we have also worked with Teresa Toriseva, Esq. of the Toriseva law firm. Notably, we have worked closely with defense counsel in this case, Tucker Ellis, L.L.P. in the *Ortho-Evra Litigation* in California.<sup>2</sup> These are but a few of the firms and attorneys involved in this

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<sup>2</sup> Our principal contacts have been Sue-Lyn Combs of Tucker Ellis' Los Angeles office; and Bob Tucker and Julie Callsen of Tucker Ellis' Cleveland office.

litigation with whom we have successfully worked before, and the Court can expect we will do so here.

#### **IV. PROFESSIONAL EXPERIENCE IN THIS TYPE OF LITIGATION**

The undersigned and members of his firm bring considerable experience and knowledge of complex litigation to bear here. The undersigned's experience in complex litigation includes the following: served on the lead class plaintiff's counsel's team in the *California Electricity Antitrust Litigation*; served as a PSC member in the California state *Fen-Phen Litigation*, in which he managed his firms' well over 1000 fen-phen cases; has tried pharmaceutical cases in California, Pennsylvania, and Texas. He was also been active in the *Vioxx* and *Ortho-Evra Litigations*. Additionally, the undersigned's colleague Erik Walker, Esq. has a substantial track record in mass tort litigation such as serving as Chair of the Law & Briefing Subcommittee of the *Hormone Replacement Therapy Litigation* MDL PSC, as well as being heavily involved in the federal *Seroquel Litigation* MDL. Also, another colleague of the undersigned, Shamus B. Mulderig, Esq. has experience representing both plaintiffs and defendants in complex litigation. Most recently, Mr. Mulderig was an active participant in the *Guidant Defibrillator Litigation*, and has tried numerous personal injury cases to verdict.

#### **IV. Conclusion**

For all the forgoing reasons, the undersigned humbly and respectfully requests his and his firm's admission to this MDL's PSC.

/s/ G. Erick Rosemond  
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**CERTIFICATE OF SERVICE**

I hereby certify that on October 20, 2008, a copy of foregoing Amended Application to the Plaintiffs' Steering Committee in MDL 1968 was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/ G. Erick Rosemond

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